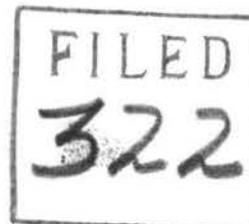


September 20, 1966



**OPINION NO. 322**  
Answered by Letter-Nowotny

Honorable Haskell Holman  
Auditor for State of Missouri  
Capitol Building  
Jefferson City, Missouri

Dear Mr. Holman:

This is in answer to your request for an opinion on the question of what would be the statutory salary allowable to the clerk of the Hannibal Court of Common Pleas for the years 1961 to 1965, inclusive.

In your request for an opinion you have sent a copy of a Petition for Declaratory Judgment styled Paul O. Munger v. Marion County, Missouri, et al. No. 21658, which was filed on October 12, 1957, in the Hannibal Court of Common Pleas for Mason and Miller Townships, Marion County, Missouri. This petition prays for a declaratory judgment as to the compensation and salary of the Plaintiff as the duly elected, qualified and acting Clerk of the Hannibal Court of Common Pleas.

You also sent us a copy of a Declaratory Judgment rendered on December 28, 1957, by the Judge of the Hannibal Court of Common Pleas for Mason and Miller Townships, Marion County, Missouri, in the case of Paul O. Munger v. Marion County, Missouri, et al. In this judgment the Court found in part as follows:

"The Court finds that the plaintiff is now the duly elected, qualified and acting Clerk of the Hannibal Court of Common Pleas in the County of Marion and State of Missouri; that Marion County has a population of less than 30,000 inhabitants and more than 25,000 inhabitants;

Honorable Haskell Holman

that there has been no judicial determination of the fact in relation to the salary of the Clerk of the Hannibal Court of Common Pleas since the last census; that there is no statute specifically setting the salary of the Clerk of the Hannibal Court of Common Pleas. Section 483.455 V.A.M.S. is not applicable because it applies only to clerks of courts of common pleas in counties having a population of not less than 30,000 inhabitants."

The Court after finding the facts entered the following judgment:

"WHEREFORE, it is ordered, declared and adjudged that by law the Clerk of the Hannibal Court of Common Pleas from this date shall be entitled to the annual compensation as provided by Section 483.330 V.A.M.S. 1949 and amendments thereto, which section now provides an annual compensation of \$4800.00, payable in monthly installments of \$400.00 each month, and such clerk is not entitled to any extra or added compensation as clerk of the Juvenile division, as a Member of the Board of Jury Commissions and Ex-officio Clerk thereof, or any added compensation now provided for additional duties as such clerk."

Finally you also sent us a copy of an Order of the Judge of the Hannibal Court of Common Pleas styled "IN THE MATTER OF THE COMPENSATION OF THE CLERK OF THE HANNIBAL COURT OF COMMON PLEAS." This Order is not dated but was to be effective as of October 13, 1961, and reads in part as follows:

"THEREFORE, to correct the great injustice that would otherwise be done, it is Ordered and Decreed that until Section 483.455 is amended at the next session of the General Assembly of Missouri or is otherwise provided, the Clerk of the Hannibal Court of Common Pleas shall receive the same compensation as is now provided for Circuit Clerks of Third Class Counties where there is a separate Circuit Clerk and a separate Recorder and as provided by Section 483.330, or the sum of \$4,800.00, together with the

Honorable Haskell Holman

additional compensation of \$1,200.00 as provided by Section 483.471, enacted in Senate Bill No. 289 by the 71st General Assembly. This Order to be effective as of October 13, 1961."

Prior to 1961 Section 483.455, RSMo 1959, provided as follows:

"The clerks of courts of common pleas in all counties in this state which now or may hereafter have a population of not less than thirty thousand inhabitants and not more than forty thousand inhabitants, and which said courts of common pleas now have and exercise or may hereafter have and exercise within well defined territorial limits within their respective counties the same exclusive original jurisdiction in both civil and criminal actions as is now had and exercised by circuit courts of this state, shall receive for their services, annually, the sum of two thousand dollars."

We note that in 1957 the population of Marion County where the Hannibal Court of Common Pleas is located was below thirty thousand.

It was in 1957 that the action for declaratory judgment was filed and the judgment rendered declaring the salary of the Clerk of the Hannibal Court of Common Pleas.

Then on July 20, 1961 the legislature amended Section 483.455 to read as follows, RSMo Supp. 1965:

"The clerk of the Hannibal court of common pleas shall receive for his services, annually, the sum of two thousand dollars."

The language of Section 483.455 as it presently reads is explicit and the legislative intent is clear that the salary of the Clerk of the Hannibal Court of Common Pleas is two thousand dollars per year.

Ordinarily this would be the obvious conclusion unless there is a valid, binding and final judgment of a court having jurisdiction of the parties which has made some different ruling respecting the meaning of this statute. As previously indicated, there has been a purported ruling or order by the Hannibal Court of Common Pleas touching this matter. Hence our inquiry must turn to the validity and effect of the Court's order and particularly the authority or jurisdiction of the Court to make the order.

Honorable Haskell Holman

The jurisdiction of a court is the right and power to adjudicate or render judgment concerning the subject matter of a given case. Swenson v. Swenson, 299 S.W.2d 523, transferred to 313 S.W.2d 770; Healer v. Kansas City Public Service Co., 251 S.W.2d 66. To have jurisdiction the court must have cognizance of the class of cases to which the one to be adjudged belongs, the proper parties must be present and the point to be decided must be, in substance and effect, within the issue. Robinson v. Levy, 217 Mo. 498, 117 S.W. 577.

A judgment is a conclusion of the law on the pleadings and evidence. Kansas City v. Woerishoeffler, 249 Mo. 1, 155 S.W. 779. The essentials generally to have a valid and binding judgment are that the sentence, order or adjudication in question be that of a judicial tribunal determining rights of parties in formal proceedings in a final and definite manner where the party seeking judgment has taken proper steps and the adversary has had proper notice. Ex parte Irwin, 320 Mo. 20, 6 S.W.2d 597; In re Condemnation of Land for Opening and Establishing a Public Parkway in Kansas City, 188 Mo. App. 567, 176 S.W. 529; In re Phillips' Estate, 240 Mo. App. 9, 202 S.W.2d 107, affirmed 357 Mo. 947, 211 S.W.2d 728.

The Order of the Hannibal Court of Common Pleas which became effective October 13, 1961, appears to have been made on the Court's own motion. You have informed us that there has been no petition filed on the question of the clerk's salary after Section 483.455 was amended in 1961 setting the salary at \$2,000 per year and that there has been no formal adversary proceeding on this particular factual issue. There was no formal proceeding before the Court for determination, no adverse or contesting parties, and no statute or common law right that we are able to perceive which would give the Court authority or jurisdiction to make the adjudication which it attempted to make. It might be contended the Court has the inherent or common law power to fix the salary of its own clerk. This might be a valid contention but for the express statute to the contrary. Therefore, the Order of October 13, 1961, is not a valid and binding judgment.

Since the Order does not have the force and effect of legally determining the Clerk's salary, it is our opinion that the basic salary of the Clerk of the Hannibal Court of Common Pleas from July 20, 1961, the effective date of Section 483.455, RSMo Supp. 1965, to 1965, inclusive, was two thousand dollars per year and not four thousand eight hundred dollars per year as provided by Section 483.330, RSMo 1959.

This does not, of course, preclude additional salaries and fees for the Clerk as may be provided for by other statutes.

Specifically, Section 483.461, RSMo 1965 enacted in 1961, provides additional compensation of twelve hundred dollars per year for the performance of certain additional duties and Section 483.470,

Honorable Haskell Holman

RSMo 1959, provides additional compensation of three hundred dollars per year for serving as members and ex-officio clerks of the board of jury commissioners for their respective courts.

Therefore, the salary allowable to the Clerk of the Hannibal Court of Common Pleas for the years 1961 to 1965, inclusive, was \$2,000 per year from the effective date of Section 483.455, RSMo Supp. 1965, plus \$1,200 per year from the effective date of Section 483.461, RSMo Supp. 1965, plus \$300 per year as provided by Section 483.470, RSMo 1959.

Very truly yours,

NORMAN H. ANDERSON  
Attorney General

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